IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 38 of 2005 (S/B)

Shri S.K. Goel
S.o Late Shri V.S. Goel,
R/o 158 Mitra Lok Colony,
Dehradun. …….…. Petitioner

Versus

State of Uttaranchal & others. ..……. Respondents

…….

Mr. M.C. Pant, Advocate, counsel for the petitioner.
Mr. J.P. Joshi, Addl. C.S. C., for the State of Uttaranchal.

Coram: Hon'ble Cyriac Joseph, C.J.
Hon'ble Rajesh Tandon, J.

[Per Hon'ble Chief Justice]

1. When Civil Misc. Application No. 1488 of 2005 came up for hearing today, the learned counsel for the parties agreed that the writ petition itself should be heard and disposed of. Hence, writ petition was heard and is being disposed of.

2. The petitioner is an Assistant Excise Commissioner. He entered service of the State of Uttar Pradesh. On creation of the new State of Uttaranchal, the petitioner opted for the State of U.P. though at that time he was working at Hardwar which is now part of the State of Uttaranchal. As per the final allotment made by the Central Government, the petitioner has been allotted to the State of U.P. On the basis of the said allotment, Annexure 1 and Annexure 1 A orders were issued relieving the petitioner from the State of Uttaranchal and directing him to report before the Excise Secretary, Government of U.P. Challenging Annexure 1 and Annexure 1A orders, the petitioner filed this writ petition. Apart from praying to quash Annexure 1 and Annexure 1A orders, the petitioner has also prayed for a direction to respondents 1 and 2 to allow the petitioner to continue in the State of Uttaranchal till the completion of the enquiry contemplated against him or in the alternative to direct the respondent no. 1 to restore

the status of the petitioner in service and to transfer the enquiry to the State of U.P. alongwith all documents.

3. A counter affidavit has been filed on behalf of the respondents 2 and 3 and the petitioner has filed the rejoinder affidavit also.

4. The petitioner has not disputed that he had opted for the State of U.P. and that he has been finally allotted to the State of U.P. by the Government of India. Therefore, the petitioner is liable to be relieved from the State of Uttaranchal and he is bound to report to the Government of U.P. as directed in Annexure 1 and 1A orders.

5. The only ground on which the petitioner challenged the Annexure 1 and Annexure 1A orders is that the Government of Uttaranchal have initiated disciplinary action against him and that it is still pending. When the writ petition was filed, the petitioner was under suspension and a writ petition challenging the suspension was also pending before this Court. The writ petition in which the suspension was challenged has since been disposed of with a direction to reinstate the petitioner in service forthwith and to give him a posting under the Government of Uttaranchal subject to the decision in this writ petition. It is not disputed that till date no memo of charges has been served on the petitioner. In the above circumstances, the prayer of the petitioner for direction to the first respondent to restore the status of the petitioner in service has become infructuous as the petitioner has already been reinstated in service ending the suspension.

6. We do not find any justification for further delaying the allotment of the petitioner to the State of U.P. and the relief of the petitioner from the State of Uttaranchal on the ground that the disciplinary proceedings initiated against him have not been completed. Once the petitioner is relieved from the State of Uttaranchal, he ceases to be an employee of the Government of Uttaranchal. In that event, it is for the Government of Uttaranchal to consider whether it should drop the disciplinary proceedings against the petitioner or to forward the records of the

proceedings to the Government of U.P. for appropriate action. In either case, the petitioner cannot have a grievance because the very prayer of the petitioner is to transfer the disciplinary proceedings to the State of U.P.

7. In the above circumstances, the writ petition is dismissed. The petitioner shall report to the Excise Secretary, Government of U.P. in compliance with Annexure 1A order within two weeks from today.

8. Since the petitioner stands relieved from the State of Uttaranchal, the first respondent shall take a decision with regard to the continuance of the disciplinary proceedings against the petitioner and also settle the claim, if any, of the petitioner for arrears of subsistence allowance and salary for the period he was in the service of the Government of Uttaranchal. This shall be done as expeditiously as possible and at any rate within a period of three months from today.

(Rajesh Tandon, J.) 22.06.2005

(Cyraic Joseph, C.J.) 22.06.2005

A